Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.

No. 89-704

In The
Supreme Court Of The United States

OCTOBER TERM, 1989

JACOB J. KROZSER, Administrator of the Estate of Stephen Krozser,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

OBJECTION TO PETITIONER'S MOTION FOR DEFERRED CONSIDERATION

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Petitioner has requested that this Court defer consideration of his petition until thirty days after the Court renders its decision in *Howlett v. Rose*, No. 89-5383. The petition for certiorari in *Howlett* was granted on November 13, 1989. 58 U.S.L.W. 3320 (11/14/89). In support of his motion, the Petitioner claims that the issues in *Howlett* and in this case are identical. A review of the questions presented in both cases shows clearly, however, that the issues are not similar and that no purpose would be served by deferring consideration of the petition in this case.

In *Howlett v. Rose*, 537 So.2d 706 (Fla. App. 2 Dist. 1989), *rev. denied*, 545 So.2d 1367 (Fla. 1989), an action for injunctive relief and money damages was brought pursuant to 42 U.S.C. § 1983 against a county school board and several of the county's school officials. The District Court of Appeals of Florida for the Second District ruled that the defendants in *Howlett* were immune from Section 1983 actions in Florida's courts in that, under Florida laws, school boards and municipalities are beneficiaries of sovereign immunity. *Id.*, 708. The question presented in *Howlett*, therefore, is whether a Florida school board and its local school officials, by virtue of the sovereign immunity of the state, are immune from suit in actions brought against them in Florida courts pursuant to 42 U.S.C. § 1983. 58 U.S.L.W. 3343 (11/21/89).

The defendant in this case is the State of Connecticut.[1] The only issues in this case are whether the State of Connecticut, by virtue of its sovereign immunity, is immune from suit for money damages brought against it in state court pursuant to 42 U.S.C. § 1983 and/or whether the State of Connecticut is a "person" under § 1983.

It is now established that school boards and local school officials are "persons" who can be sued directly under § 1983 for money damages. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, 98 S.Ct. 2018, 2035 (1978). Through its enactment of § 1983, making municipalities amenable to suit, Congress "abolished whatever vestige of the State's sovereign immunity the municipality possessed." *Owen v. City of Independence*, 445 U.S. 622, 647–648, 100 S.Ct. 1398, 1413–1414 (1980). In ruling that a state notice-of-claim statute is preempted pursuant to the Supremacy Clause when a § 1983 action for money damages is brought in a state court against a municipality and municipal police officers, this

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[1] As acknowledged by the Petitioner at page ii of his Jurisdictional Statement, the action as to Raymond M. Lopes, in his official capacity as Commissioner of Correction of the State of Connecticut, abated upon his departure from office.

Court stated that "[t]he decision to subject state subdivisions to liability for violations of federal rights . . . was a choice that Congress, not the [state's] legislature, made, and it is a decision that the State has no authority to override." *Felder v. Casey*, ____ U.S. ____, 108 S.Ct. 2302, 2309 (1988). There is certainly a question as to whether the decision of the Florida District Court of Appeals in *Howlett* conflicts with the above rulings of this Court concerning the liability of state subdivisions under § 1983 and attempts to bar or condition such suits when filed in state courts.

The questions presented in this case have nothing to do with the liability of municipalities, boards of education or other local government units under § 1983. The defendant in this case is the State of Connecticut. This Court has recently ruled in unambiguous terms that § 1983 was not intended to override the "well-established immunity of a State from being sued without its consent," and that "neither a State nor its officials acting in their official capacities are 'persons' under § 1983." *Will v. Michigan Dept. of State Police*, ____ U.S. ____, 109 S.Ct. 2304, 2310, 2312 (1989). No purpose would be served by deferring consideration of the petition in this case pending a decision in *Howlett*.

CONCLUSION

For all the foregoing reasons, this Court should deny the Petitioner's Motion for Deferred Consideration.

Respectfully submitted,

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